

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 13TH MARCH 2007 / 22ND PHALGUNA 1928

Crl.MC.No. 3039 of 2004()

C.C.NO.147/03 OF THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE
COURT, ERNAKULAM.

CRIME NO.159/95 OF THIRURANGADI POLICE STATION.

PETITIONER: 26TH ACCUSED:

PALLIYALI MOIDEEN, S/O. P.K.M.KUTTY,
MOONNIYOOR AMSOM, ALINCHUVADU DESOM,
TIRURANGADI TALUK,MALAPPURAM DIST.

BY ADV. SRI.K.MUHAMMED SALAHUDHEEN

RESPONDENTS: COMPLAINANT/STATE:

STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 13/03/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 3039 OF 2004

Dated this the 13th day of March, 2007

ORDER

The petitioner – accused No.26, faces indictment in a prosecution, inter alia, for the offence punishable under Sec.3 of the P.D.P.P. Act. Cognizance was taken on the basis of a final report submitted by the police after due investigation. Cognizance was taken by the learned Judicial Magistrate of the First Class, Parappanangady. The alleged incident had taken place on 25/5/95. Final report was initially submitted on 5/6/96. It was returned. Thereafter, it was filed on 22/11/2000. Of course, the learned counsel for the petitioner has a further submission that it was returned on 22/11/2000 also and finally, it was submitted on 27/11/2000. Let the controversy be as it is. Cognizance was taken and the case was registered as C.C.No.218/2000 before the Judicial First Class Magistrate's Court, Parappanangadi. That case was later transferred to the Court of the learned Chief Judicial Magistrate, Ernakulam. The principal accused in the case – Abdul Nazar Madani, is not available for trial and the matter is dragging on on that ground.

2. The petitioner has not entered appearance before the learned Magistrate so far. He has now come to this Court

with this petition under Sec.482 of the Cr.P.C. He prays that the proceedings against him may be quashed.

3. What is the reason? The learned counsel for the petitioner submits that cognizance taken is in violation of the statutory provisions relating to the limitation under Chapter-XXXVI of the Cr.P.C.

4. Sec.468 of the Cr.P.C. stipulates the period of limitation. It is significant to note that for the offence punishable with imprisonment for a period exceeding three years, law has not fixed any period of limitation. The contention therefore has no legs to stand on. The offence under Sec.3 of the P.D.P.P. Act is punishable with imprisonment for a period which may extend to five years and in these circumstances, the plea that cognizance taken is barred by limitation cannot obviously succeed.

5. Reports of the learned Chief Judicial Magistrate were called for. The reports submitted by the learned Chief Judicial Magistrate does cause concern and anxiety. Appearance in the case is not complete yet as can be deciphered from the order sheet/proceedings paper, a copy of which is made available as directed. In spite of this, it is seen that the case is being

adjourned by notification. Adjournment by notification of a criminal case cannot be held to be impermissible in an appropriate case to save time of the court. Unnecessary wastage of time for "calling work" can be avoided by the process of adjournment by notification. Primarily it must be ensured that there is no unnecessary posting of any case for calling. But it must be ensured that such adjournment by notification can only be after the appearance in the case is complete. Before appearance in the case is complete, resort to such course of adjournment by notification is heartless and would result in unnecessary protraction of the proceedings.

6. If the presence of one of the accused alone cannot be secured, certainly it must be possible for the learned Magistrate to seek the permission of the High Court to split up the case against such non-available accused and proceed against the other accused. Even if there be no specific stipulation in the rules to meet such a contingency, appropriate directions under Sec.482 of the Cr.P.C. can be sought by the learned Magistrate or by any of the accused. At any rate, the proceedings which have commenced as early as in 2000 about an incident which

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had taken place in 1995 deserves to be brought to termination expeditiously. The learned Magistrate must make every endeavour to ensure such expeditious disposal.

7. With the above observations, this Crl.M.C. is dismissed.

Sd/-

Nan/

(R. BASANT, JUDGE)

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P.S. to Judge

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The learned counsel for the petitioner raises a grievance that even though the alleged incident had taken place as early as on 25/5/95, cognizance had not been taken within the stipulated period of time. Final report which was initially filed was returned and it was re-submitted long later without any sufficient explanation for the delay. In these circumstances, cognizance taken is not legally sustainable and is barred by limitation, it is urged.

2. On this aspect, the report submitted by the learned Additional Chief Judicial Magistrate is silent. Call for a further report from the learned Additional Chief Judicial Magistrate, Ernakulam. The learned Magistrate shall explain the date on which the charge sheet was initially submitted, returned, re-presented, further returned, re-presented etc., and the date on which ultimately process was issued to the accused persons. Such report shall reach this Court by 12/3/2007. Call on 13/3/2007.

Nan/

(R. BASANT, JUDGE)

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